IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 472 OF 2004
IN
ARBITRATION PETITION (LODGING) NO.162 OF 2002

1. Mokashi Aromas Pvt.Ltd. & ors. .. Appellants

v/s.

1. Kotak Mahindra Bank Ltd. & anr. .. Respondents

Mr.Shekhar Naphade with Mr. Tushar Bhavsar i/by
M/s. Mohit Gadkari & Co. for appellants.

Mr.R.M.Kadam with Mr. Dinesh Purandare i/by M/s.
A. Mehta Laljee & Co. for Respondent No.1.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 17th August, 2004

P.C.

Heard.

2. Admit.

3. The advocate on record for respondent No.1 waives service. For the purposes of the present appeal, service on respondent No.2 is dispensed with.

4. Appeal is heard finally at this stage.

5. The present appeal arises out of the interim order dated 11th June, 2004 whereby during the pendency of the arbitration petition, the interim

order in terms of prayers (b), (d) and (e) of the arbitration petition has been passed by the learned Single Judge.

6. Since the arbitration petition is pending before the learned Single Judge, we do not intend to go into the diverse aspects raised in the appeal. Admittedly, the present appellants did not choose to appear before the learned Single Judge in opposition to the interim reliefs in arbitration petition and in view thereof, we do not intend to interfere with the said order. As it is, we are informed that the Court Receiver pursuant to the order dated 11th June, 2004 has taken possession of the properties described in Exhibit HH1, the properties described at serial Nos.2 and 3 in Exhibit HH2 and the properties described at serial No.1 (this property is same as described at serial No.2 in Exhibit HH2) and serial No.2 in Exhibit HH3. The learned senior counsel for the appellants in the backdrop of these facts submitted that the Court Receiver may be directed to appoint the present appellants as the agent of Court Receiver without any security and royalty. Mr. Kadam, the learned counsel for the respondent No.1 vehemently contended that the present appellants having defrauded the first respondent of a large amount, if at all the appellants intend to be the agent of the Court

Receiver, the same should be on payment of royalty.

7. The arbitration proceedings have already commenced and looking to the jurisdiction of the court in passing the order of interim measure of protection under section 9 of the Arbitration and Conciliation Act, 1996, it appears to us that the appointment of Court Receiver over the properties described in Exhibits HH1, HH2 and HH3 fully protects the interest of the first respondent during the pendency of the arbitration petition and appointment of the present appellants as an agent of the Court Receiver in respect of the said properties without security and royalty shall not be prejudicial to the interest of the first respondent.

8. We, accordingly, dispose of the appeal by following order:-

(i) The interim order passed by the learned Single Judge on 11th June, 2004 is maintained.

(ii) However, it is clarified that the Court Receiver shall appoint the present appellants as its agent without security and royalty except

moveables.

(iii) We further clarify that the aforesaid order shall remain operative only until disposal of the arbitration petition.

The parties may be provided ordinary copy of this order duly authenticated by the Court Associate on payment of usual copying charges and upon production thereof, the Court Receiver to act accordingly.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)